

***United States Court of Appeals
for the Second Circuit***



**PETITIONER'S
BRIEF**

77-4088

United States Court of Appeals

FOR THE SECOND CIRCUIT

GENERAL DYNAMICS CORPORATION, ELECTRIC BOAT DIVISION,
Petitioner,
—against—

BENEFITS REVIEW BOARD OF UNITED STATES DEPARTMENT OF
LABOR; DIRECTOR, OFFICE OF WORKERS' COMPENSATION
PROGRAMS; INSURANCE COMPANY OF NORTH AMERICA AND
HELEN SOBOLEWSKI, WIDOW OF JOSEPH SOBOLEWSKI,
DECEASED; AND THE ESTATE OF JOSEPH S. SOBOLEWSKI,
DECEASED,

Respondents.

APPEAL FROM THE BENEFITS REVIEW BOARD BRIEF FOR PETITIONER

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Respondents.

APPEAL FROM THE BENEFITS REVIEW BOARD BRIEF FOR PETITIONER

Preliminary Statement

This is an appeal by General Dynamics Corporation, Electric Boat Division, as a self-insured employer, pursuant to 33 USC §921, from a decision of the Benefits Review Board, reported at 5 BRBS 474, which affirmed the order and decision of the Administrative Law Judge (hereinafter Adm. Law Judge), Louis Scalzo, dated June 19, 1976 (76 LHCA 204).

The Benefits Review Board affirmed the Adm. Law Judge's findings that Mr. Joseph S. Sobolewski had developed a carcinoma in his lung due to his long exposure to asbestos materials from 1955 to 1973 while an employee

of General Dynamics, and that his carcinoma caused him to be permanently, totally disabled beginning June 29, 1973, and resulted in his death on October 10, 1973. It also found General Dynamics, as self-insurer, and not its carrier, Insurance Company of North America, was liable for the entire award.

Issues Presented for Review*

1) Whether the Benefits Review Board erred in not finding Sobolewski had an injury (a well-advanced carcinoma of the lung due to asbestos exposure) as of January, 1973, or earlier, based on the uncontradicted medical evidence in the record, and that Sobolewski's period of disability commencing on June 29, 1973, and his death in October 1973, were the result of the natural, irreversible progression of his carcinoma existing prior to January, 1973.

2) Whether the Benefits Review Board erred in using as a test for determining *carrier* liability, as distinguished from *employer* liability, the date Sobolewski said he first became aware that his symptoms were related to his employment (July, 1973) rather than the date upon which the uncontradicted medical evidence shows Sobolewski suffered an injury (a carcinoma of the lung) due to an occupational disease, viz., January, 1973 or earlier.

Stated differently, where the essential dispute is between insurance carriers and not between employee and employer,

* The following issues decided by the Benefits Review Board are not being appealed by the petitioner: the determination of Mr. Sobolewski's average weekly wage pursuant to §910(c), the inclusion of overtime and the amount of his attorney's fee. Thus, there is no dispute existing between Mrs. Sobolewski and General Dynamics. Mrs. Sobolewski has received and will continue to receive the full amount of compensation for her husband's injury and death.

should the uncontradicted medical evidence control the issue of when an occupational disease (the "injury") and hence insurance coverage, existed.

3) Whether Insurance Company of North America (hereinafter INA) which insured General Dynamics for workmen's compensation benefits from 1954 to April 1, 1973, has the burden of proving that Sobolewski continued to be exposed to "injurious stimuli" (asbestos fibers in a harmful concentration) between April 1, 1973 and June 29, 1973, when he left work *and* that such exposure was causally related to his death in October, 1973 and if so, did INA fail to meet its burden?

Statement of Facts

Joseph Sobolewski was employed by General Dynamics from 1941 to 1973. From 1955 to 1973, he worked as a pipe lagger, a pipe-coverer, and ultimately as a working leader. Throughout this period, 1955 to 1973, it was alleged that Mr. Sobolewski was often exposed to asbestos in various forms (15, 16a).*

From 1954 to April 1, 1973, INA was the workmen's compensation insurer for the Electric Boat Division of General Dynamics pursuant to the Longshoremen's and Harbor Workers' Compensation Act (hereinafter the LHWCA), 33 USC § 932(a)(1). After April 1, 1973, General Dynamics became a self-insurer pursuant to 33 USC § 932(a)(2) for purposes of workmen's compensation under the LHWCA.

The medical evidence in this case demonstrates that Sobolewski had a well-advanced carcinoma of the lung (lung cancer) by late 1972 (65, 75, 80a), if not earlier (80, 110a). The Adm. Law Judge found that Sobolewski's

* References are to pages in the Appendix.

lung condition was caused by his exposure to asbestos while employed at General Dynamics, that it caused him to be totally disabled from work from June 29, 1973, and resulted in his death on October 10, 1973 (26a).

Medical History:

In 1968, a chest x-ray given by General Dynamics revealed that Sobolewski had a degree of pulmonary fibrosis (51a). Pulmonary function tests given in January, 1972 (233a) and chest survey x-ray reports in February and March 1972 (52-53; 234, 236a) disclosed evidence of asbestosis and fourteen types of abnormality, including a "pulmonary lesion". The two medical experts in this case, Dr. Ruth Lillis and Dr. Elliott L. Sagall both agreed that these findings were consistent with a diagnosis of a carcinoma (tumor) of the lung as of January, 1973, if not earlier (21, 65, 80, 110a).

A General Dynamics' chest survey x-ray report dated January 19, 1973, refers to pleural scarring, pulmonary lesions, probable asbestosis and possible tumor (242a). A General Dynamics' Physical Examination Record, dated January 23, 1973, refers to the abnormal chest x-ray of January 19, 1973, and notes that no report had been received from Sobolewski's family doctor (237a).

Mr. Sobolewski left work on June 29, 1973, and was hospitalized on July 1, 1973 (221a). He was discharged on July 7, 1973, with a diagnosis of "probable carcinoma of left lung with axillary lymph node metastasis" (221a).

Mr. Sobolewski returned to work for a few days at the end of July, 1973 (13a). He was again hospitalized on October 7, 1973, and expired on October 10, 1973 (227a). The final diagnosis was carcinoma of the lung and lung cancer was established as the cause of death (228a).

Both medical experts in this case concluded Sobolewski's cancerous condition existed as of January, 1973, if not earlier; Dr. Sagall stated it existed as of February, 1972 (21, 114a) and Dr. Lilis found the cancer had developed by late 1972 or January, 1973 (21, 65a). Both medical experts stated that this lung cancer was irreversible and exposure after April 1, 1973 would have had no effect on Sobolewski's disability in July, 1973 and death in October, 1973 caused by the cancer (78, 83-84, 114, 138a).

Based on the medical testimony of Dr. Lilis that a specific causal relationship existed between Sobolewski's lung cancer and his exposure to asbestos, the Adm. Law Judge found that Sobolewski's disability from June 29, 1973, and his death in October, 1973, were due to the carcinoma of his lung (26a). The Adm. Law Judge also found that such lung cancer was precipitated by asbestosis which Sobolewski had contracted over a period of many years' exposure to asbestos materials while employed by General Dynamics (26a).

The Administrative Proceedings:

An Employee's Claim for Compensation, Form BEC 203, was filed with the office of Workers' Compensation Programs on October 4, 1974 (251, 252a).^{*} General Dynamics filed an Employer's First Report of Accident or Occupation Illness, Form BEC 202 on October 14, 1975 (253, 254a). A hearing was held before the Hon. Louis Scalzo,

^{*} The Adm. Law Judge found General Dynamics received timely notice of injury and death pursuant to 33 USC §912, and that a claim for compensation was timely filed pursuant to 33 USC §913(a), even though Mrs. Sobolewski's claim for compensation was filed almost a year after her husband's death.

Adm. Law Judge, United States Department of Labor at New London, Conn., on January 9, 1976.

This hearing resulted in an order and decision by the Adm. Law Judge dated June 10, 1976 (10a). General Dynamics filed timely notice of appeal (268a) and petition for review of the order with the Benefits Review Board (270a). The Benefits Review Board issued its order and decision dated February 16, 1977 (3a). General Dynamics timely filed its notice of appeal to this Court pursuant to 33 USC § 921 (1a).

POINT I*

The Uncontradicted Medical Evidence in the Record Shows Sobolewski Had a Well-Advanced, Irreversible Carcinoma of the Lung (Lung Cancer) as of January, 1973, If Not Earlier, Caused by Asbestos Exposure During the Time INA Was the Carrier.

The only medical experts in this case, Doctors Lilis and Sagall, each testified that in their opinion Sobolewski had a well-advanced, irreversible carcinoma of the lung (lung cancer) as of January, 1973, if not earlier, which is before INA went off the risk on April 1, 1973.

Dr. Lilis testified that in her opinion the medical evidence showed Sobolewski had the occupational disease of asbestosis (61a) and that the carcinoma, or tumor, in his lung was caused by asbestosis and long term exposure to asbestos fibers while employed at General Dynamics (62a).

The doctor also stated that there is usually a ten or fifteen year period between the onset of exposure to as-

* The petitioner's argument in this brief is similar to its argument in the case of *General Dynamics v. Benefits Review Board, et al.*, Doc. No. 77-4049, which is to be heard before this same Panel. Petitioner's brief in No. 77-4049 was filed very shortly before its Notice of Appeal was filed in this case.

bestos fibers and the diagnosis of a carcinoma or tumor in the lung caused by such exposure (75a).

Dr. Lilis testified that, based on her examination of the x-ray report of January 19, 1973 (242a), this carcinoma, or tumor, existed as of late 1972 or January, 1973 (65, 80a), and was caused by prior exposure to asbestos fibers (75a). She also testified on cross examination by INA that Sobolewski's exposure to asbestos in 1972 or 1973 was not relevant to, and did not contribute to, his final illness in any significant degree (76-81a). The doctor testified that if Sobolewski had stopped being exposed to asbestos as early as 1968, "he probably would have undergone the same course of events" i.e. death by lung cancer (78, 83a).

Dr. Sagall testified that based on his examination of the x-ray reports of February, 1972 (234a) and subsequent x-ray reports of January 1973 (242a), and July 1973 and the hospital reports of July, 1973 (222-225a), it was his opinion that Sobolewski had lung cancer in February, 1972 (110a).

Dr. Sagall referred to the "inexorable progression" of Sobolewski's lung cancer and stated that the medical records did not indicate any aggravation of his condition by work activities during 1973 (114a). He testified that Sobolewski's exposure to asbestos during 1973, played no part in his death (112-113, 134-140a).

On cross-examination by INA, Dr. Sagall stated that the inhalation of asbestos fibers in 1973 could not have caused Sobolewski's lung cancer (134-140a). The doctor stated that the incubation period for lung cancer associated with asbestosis is in the range of at least twenty years (137a) and that it is "unlikely and improbable" that a recent exposure in an individual who already has lung cancer would play any role in that condition (138a). When asked if recent ex-

posure would have had an effect on Sobolewski's lung cancer, the doctor testified that such exposure would have "no role" in his condition (140a). He stated "there is no medical literature which blames recent exposure, weeks, months, to asbestos diseases in the individual. It's always the past exposure" (138a).

The Adm. Law Judge reviewed the medical testimony in this case and noted that Dr. Sagall concluded that Sobolewski's lung cancer existed "as far back as February of 1972" and that Dr. Lilis found that the cancer had developed by late 1972 (21a). This was during the time INA was the carrier on the risk. The Adm. Law Judge also found that both doctors "were of the opinion that early exposure to asbestos, as distinct from later exposure, would have precipitated the development of cancer" (21a).

The fact that the record does not specifically reflect a date of onset for the cancerous condition is not relevant to the issue in this appeal. The issue is not when during INA's period of coverage the cancer began to develop, but whether Sobolewski had the cancer before INA left the risk on April 1, 1973.

Both medical experts were unanimous in their opinion that Sobolewski had a well-established, irreversible lung cancer as of late 1972 or January, 1973 and that subsequent exposure after January 1973, would have had no effect on the "inexorable progression" of this lung cancer which lead to Sobolewski's death in October, 1973 (78, 83, 114a).

POINT II

The Benefits Review Board Erred in Using as a Test for Determining Carrier Liability In This Particular Case, the Date Sobolewski Said He First Became Aware That His Symptoms Were Related to His Employment (July, 1973), Rather Than an Earlier Date at Which Time the Uncontradicted Medical Evidence in the Record Shows Sobolewski Had an Injury (a Well-Advanced, Irreversible Carcinoma of the Lung Caused by Asbestos Exposure), viz., January, 1973 or Earlier.

The Benefits Review Board affirmed the Adm. Law Judge's determination of carrier liability in this case based on the authority of the last employer/last carrier rule of *Travelers Insurance Co. v. Cardillo*, 225 F. 2d 137 (2nd Cir. 1955), cert. den. 350 U.S. 913. General Dynamics does not now dispute the *Cardillo* doctrine but will show *infra* why the *Cardillo* rule for determining carrier liability does not apply in this particular case.

There is no question that General Dynamics is liable for and has paid, as employer, the compensation benefits due Mrs. Sobolewski. However, General Dynamics contends that the Benefits Review Board erred in finding it, and not the INA, liable as insurer (as distinguished from the issue of employer liability) for the compensation benefits under the circumstances in this case.

General Dynamics contends the Benefits Review Board erred in using as a test for determining *carrier liability in this particular case*, the date when it believes that Sobolewski became aware that his symptoms were related to his employment (July, 1973), rather than an earlier date (January, 1973), at which time the uncontradicted medical evidence in the record shows Sobolewski had a well-advanced, irreversible carcinoma of the lung, which condition

the Adm. Law Judge found was caused by his prior exposure to asbestos while employed by General Dynamics.

The Congressional intent in enacting the LHWCA was to provide compensation to the covered employee who sustains an injury or death arising out of and in the course of his employment. Section 2(2) of the Act [33 USC § 902(2)] defines injury as follows:

“When used in this chapter . . . the term ‘injury’ means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment”

Section 3 of the Act [33 USC § 903a] states that:

“Compensation shall be payable under this chapter in respect of . . . death of an employee, but only if the death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in . . . building a vessel).”

It is undisputed in this case that Sobolewski is a covered employee within the terms of Section 3a of the Act. Neither the Adm. Law Judge, nor the Benefits Review Board made a determination of the date of “injury” in this case. However, both the Adm. Law Judge and the Benefits Review Board found that Mr. Sobolewski’s death was due to a carcinoma of the lung (lung cancer) which resulted from many years exposure to asbestos fibers during his employment at General Dynamics.

The Adm. Law Judge found that “the record reflects clear evidence that the decedent was exposed to asbestos

materials over a period of many years, and that he contracted asbestosis. This condition in turn was causally linked to the development of decedent's fatal lung cancer." (26a). The Benefits Review Board stated that "(t)he administrative law judge found that claimant's lung condition which led to his death was causally related to his employment." (4a).

General Dynamics contends that the uncontradicted medical testimony in this case clearly shows Sobolewski had an "injury" (well-advanced, irreversible lung cancer caused by asbestos exposure) as defined in 33 USC § 902(2) as of January, 1973 and prior to the time INA went off the risk.

The fact that Sobolewski died of the irreversible effects of his "injury" after INA ceased coverage cannot change the undisputed medical fact that he received his "injury" while INA was the insurer in this case.

Travelers Insurance Co. v. Cardillo, 225 F. 2d 137 (2nd Cir. 1955) is easily distinguished:

In *Cardillo*, supra, at 145, this Court laid down a rule that as between successive employers in occupational disease cases arising under the LHWCA, the last employer in whose employment the injured employee was exposed to "injurious stimuli, prior to the date upon which the claimant became aware of the fact that he was suffering from an occupational disease arising naturally out of his employment, should be liable for the full amount of the award." (Emphasis added).

The *Cardillo* Court, supra at 145, also determined that liability for the award as between successive insurance carriers would be handled "in the same manner". It formulated this general rule over twenty years ago for a number of reasons, paramount of which was the "dearth of

medical certainty with respect to the time that is required for them (occupational diseases) to develop", supra at 144. Concerning the issue of carrier liability, the *Cardillo* Court, supra at 145, admitted, "*Here we are frankly groping in the dark.*" (Emphasis added).

Cardillo concerned three suits, all involving several successive carriers, and in one case, successive employers. All three claimants were found to have been suffering loss of hearing due to their occupations. The central issue in *Cardillo* was a determination of when that loss of hearing had begun and how far it had progressed during the successive periods of employment and insurance coverage.

General Dynamics contends that the *Cardillo* issues do not exist in our case. There are no successive employers in our case. General Dynamics was the only employer during the times concerned herein. It is also contended that the issue of when Sobolewski's occupational disease of lung cancer began is irrelevant in this case.

The only issue in this case is whether the uncontradicted medical evidence in our case shows that Sobolewski had a carcinoma of the lung as of April 1, 1973, when INA went off the risk. The medical evidence in the record clearly demonstrates that he did. In other words, Sobolewski had an "injury" within the meaning of the LHWCA, Section 2(2) while INA was the insurer. The only medical experts in this case were both of the opinion that Sobolewski's death in October, 1973 was the natural and inevitable result of the well-established, irreversible and inevitably fatal progress of his "injury". Stated differently, the injury (lung cancer) had occurred to Sobolewski sometime prior to April 1, 1973. The disease's symptoms had already manifested themselves while INA was still on the risk.

They were to ripen shortly into total permanent disability and the death of Mr. Sobolewski.

Clearly, the testimony in this case shows that Sobolewski's death in October, 1973 was not the result of a new injury suffered after April 1, 1973, but was the irreversible progression of the injury (lung cancer) Sobolewski had in January, 1973 or earlier. Therefore, INA should be liable for the award in our case.

The Benefits Review Board in our case interpreted *Cardillo* to find "the responsible insurer is the last insurer during which time the claimant was exposed to injurious stimuli *prior to the date claimant became aware he was suffering from an occupational disease.*" (Emphasis added, 6a).

General Dynamics does not now urge the Court to abandon the *Cardillo* rule for determining employer and carrier liability when the application of said rule is justified by the facts of the case. However, that rule is inappropriate here. The Benefits Review Board's touchstone test of "date of awareness" would be appropriate, for example, in determining when a statute of limitations begins to run for purposes of filing a claim for compensation under the LHWCA, see 33 USC § 913. But it is not an appropriate test to determine carrier liability in the circumstances of our case.

The *Cardillo* test may also be appropriate to determine carrier liability where there is no medical evidence or where successive employers and/or carriers are in dispute as to when the employee first contracted the occupational disease. However, such is not the issue here. General Dynamics contends that the issue in our case is not when Sobolewski first developed the carcinoma in his lung, but whether he had the inevitably fatal lung cancer as of April 1, 1973 when INA went off the risk.

The uncontradicted medical evidence* shows that Sobolewski had an occupational disease prior to April 1, 1973, which may not have been precisely diagnosed at that time, but which, *unchanged in nature*, came to be recognized after further tests as being terminal lung cancer.

In *Northwestern Asbestos & Cork v. Indust. Comm.*, 21 Wis. 2d 554, 124 NW 2d 628 (1963) the Court affirmed an award against an asbestos worker's next-to-last employer and its carrier where the medical evidence showed the employee already had a well-established case of asbestosis prior to his employment with his last asbestos employer (which lasted less than two months), and that such subsequent employment would not have aggravated his disease.

POINT III

Assuming Arguendo That *Cardillo* is the Appropriate Test in This Case, the Insurance Company of North America Failed to Meet Its Burden of Proving That Sobolewski's Exposure, If Any, to "Injurious Stimuli" (Asbestos Fibers in a Harmful Concentration) Between April 1, 1973 and June 29, 1973, When He Left Work, Was Causally Related to His Death in October, 1973.

INA had been General Dynamics' carrier for workmen's compensation under the LHWCA from prior to 1955 when Sobolewski first began working with asbestos products until April 1, 1973. As has been demonstrated, *supra*, Sobolewski suffered an "injury" (carcinoma of the lung) prior to April 1, 1973 which directly led to his death in October, 1973.

* We keep emphasizing the uncontradicted nature of the medical evidence because it is not open to question whether Sobolewski had lung cancer as of April 1, 1973. Rather it is a matter of unrefuted proof.

Having provided coverage for a disease that had been developing for a period of many years, during all of which time INA had collected premiums from General Dynamics, INA at the administrative level was faced with the burden of proving that the events from April 1, 1973, to June 29, 1973, somehow medically removed it from the consequences of an injury occurring during its period of coverage.

INA had to prove that Sobolewski's death in October, 1973 was medically unrelated to the lung cancer he developed from asbestos exposure during all the years INA was the insurer and that his lung cancer was caused by exposure to the "injurious stimuli" of a harmful concentration of asbestos fibers between April 1, 1973 and June 29, 1973, when Sobolewski left work.

Both the Benefits Review Board and the Adm. Law Judge found that Sobolewski's death in October, 1973 was caused by lung cancer induced by *many years* of exposure to asbestos products while employed by General Dynamics.

General Dynamics contends that not only did INA fail to meet its burden in this case, but that the uncontradicted medical evidence clearly shows that any asbestos exposure to Sobolewski between April 1, 1973 and June 29, 1973 would have absolutely no relationship to his death in October, 1973.

Furthermore, testimony in the record clearly shows that the level of asbestos exposure to Sobolewski during 1973 was far less than it had been during all the prior years of his employment. Prior to late 1971, the dangers of asbestos exposure were not generally known. Beginning in 1972, the Federal Government issued regulations* setting limits for the amount of airborne asbestos fiber particles permitted in work areas. Mr. Robert Secor, chief of environmental control at General Dynamics, stated that General

* See 29 CFR §1910.1001 *et seq.*

Dynamics fully met and exceeded these federally mandated standards of airborne asbestos fiber particles (172-176a). He also stated that beginning in 1972, General Dynamics installed new ventilating equipment in Sobolewski's work area and that all workers were required to wear respirators while working with asbestos (174, 186, 187a).

Mr. Bernard Guillote, general foreman of the Insulation Department of General Dynamics, corroborated Mr. Secor's testimony that General Dynamics had installed new ventilating equipment and that all employees, including Mr. Sobolewski, were required to wear face respirators while working (205-207, 211a). He also stated that non-asbestos materials were being substituted for asbestos in their insulation work (214a).

The testimony in the record proves that during 1973, General Dynamics was meeting or exceeding the Federal regulations, which established the safe, permissible levels of asbestos fiber concentration in Sobolewski's work area. Therefore, any asbestos exposure Sobolewski may have had in 1973 was of such a low, *Federally approved* concentration as to be noncontributory to his cancer.

In *Payne v. State Compensation Director*, 143 W. Va. 316, 140 SE 2d 793 (1965), the Court reversed an award for compensation benefits for an employee disabled by the occupational disease of silicosis, made against the last employer, where the record indicated that the concentration of silicon dioxide dust at this last employer's factory did not constitute a health hazard.

In addition to the fact that Sobolewski was exposed to a far lesser *and statutorily acceptable* concentration of industrial material from April 1, 1973 to June 29, 1973, than previously, the medical experts in this case both agreed that any exposure in 1973 *would not* have affected the pre-

existing, irreversible carcinoma Sobolewski had as of January, 1973 and which resulted in his death in October, 1973.

Dr. Lilis testified that any asbestos exposure Sobolewski had in 1972 or 1973 would have had "no significant degree" of relevance or contribution to his final illness (77a). The doctor stated that even if Sobolewski had ceased being exposed to asbestos in 1968, "he probably would have undergone the same course of events. We have seen that repeatedly in hundreds of cases" (78, 83-84a).

Dr. Sagall testified that Sobolewski's lung cancer was caused by the many years of prior exposure to asbestos fibers and not their inhalation during 1973 (134-140a). This doctor stated that: "(t)he records further do not indicate any aggravation of this condition by work activities [in 1973], but point to the inexorable progression, extension, growth, metastatic lesions and death such as is expected during the natural history of lung cancer" (114a).

On cross-examination by INA, Dr. Sagall also testified that it was "unlikely and improbable" that recent exposure to asbestos fibers in 1973 "played any role" in Sobolewski's lung cancer and subsequent death (138a). The doctor stated that "the asbestos exposure of years previously is the exposure which is indictable as the cause of asbestosis or of cancer of the lung, not the exposure that occurs recently. . . . There is no medical literature which blames recent exposure, weeks, months, to asbestos diseases in the individual. It's always the past exposure" (138a).

The medical evidence in our case demonstrates that what transpired between April 1, 1973 and June 29, 1973, was of no medical significance to Sobolewski's death in 1973. All the medical evidence is to the contrary.

INA failed to prove Sobolewski was exposed to harmful concentrations of asbestos fibers after April 1, 1973; that such exposure, if any, was causally related to his death in October, 1973; or, that his death was caused by anything other than the natural, irreversible progression of the lung cancer Sobolewski had prior to January 1, 1973.

CONCLUSION

General Dynamics asks this Court to reverse the Benefits Review Board's decision and on the basis of the uncontradicted testimony, to find the Insurance Company of North America liable for all workmen's compensation amounts due herein; or in the alternative to remand this case for findings and conclusions supported by the evidence or in the discretion of the lower tribunal for such further testimony on carrier liability as may be deemed necessary; and for such other and further relief as may be appropriate.

Respectfully submitted,

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